

Chapter 9: An Evaluation of Public Involvement Under MEPA

CHAPTER SUMMARY

This chapter was written and prepared by the Montana Consensus Council, a state agency independent from the EQC. The findings and recommendations herein are those of the Montana Consensus Council and are in no way binding on the EQC.

The EQC MEPA Subcommittee chose to evaluate public involvement processes convened under MEPA. The Montana Consensus Council conducted a survey of 280 stakeholders. Ninety-three people responded to the survey.

Eight clear themes emerge from a careful reading of the survey responses:

- (1) The idea of public involvement under MEPA is good public policy. But the practice of public involvement under MEPA could be improved.
- (2) Members of the general public are uninterested in most MEPA projects or do not believe that their input will make a difference. Some people do not understand the purpose of MEPA and how it works. Consequently, few independent citizens participate in MEPA processes, which tend to be dominated by project proponents and organized interest groups.
- (3) The objectives of public involvement under MEPA need to be clarified. This will help agencies, project proponents, stakeholders, and the general public develop a common understanding of the purpose of MEPA and MEPA-driven public involvement.
- (4) The quality of public involvement processes varies widely from case to case and from agency to agency. There should be a consistent, structured approach among all state agencies.
- (5) Montanans have opportunities to participate in state agency decisions, but public notification about upcoming MEPA projects needs to be improved, and state agencies should do more to encourage public participation.
- (6) The quality of public comment needs to be improved. Comments should be substantive and based on the best available information, but agencies need to provide better, more timely information to educate

citizens. They must also show serious consideration for comments and recognize that less tangible environmental values (such as social, cultural, aesthetic, and natural values) are just as substantive as economic values and scientific information.

(7) Although state agencies seek public input and advice, they don't always listen to what is said. The process of incorporating public comment into MEPA analysis, making tradeoffs among competing interests, and integrating public input and scientific information should be more transparent, participatory, and interactive.

(8) Public involvement is a critical ingredient of MEPA. The associated costs and perceived delays in the decisionmaking process are outweighed by the benefits of informing the public, gathering input, and securing public understanding of and support for projects.

The Montana Consensus Council offers six recommendations to improve the implementation of public involvement under MEPA. These recommendations are based on a mandate within Article II, Section 8 of the 1972 Montana Constitution, which states that "The public has the right to expect government agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law," and on guidelines on public participation in governmental operations found in section 2-3-101, MCA.

- (1) Amend the MEPA statute to clarify the value of public involvement under MEPA.
- (2) To further clarify the value and purpose of public involvement under MEPA, amend the model MEPA rules to include a statement of values for public participation.
- (3) Amend the MEPA model rules to provide a consistent approach to public involvement under MEPA across agencies and projects.
- (4) Amend the MEPA model rules to encourage "best practices" for public involvement under MEPA.
- (5) Amend the MEPA model rules to improve public awareness of MEPA and opportunities to participate.
- (6) Amend the MEPA model rules to provide a more transparent, participatory, and interactive process to integrate public input and scientific information.

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The point of public involvement is that by adding the value-rich perspectives of the public to the information-rich perspectives of the experts, we can create wiser policies.

*Adapted from Daniel Yankelovich
The Magic of Dialogue*

Introduction

The 1999 Montana Legislature, through Senate Joint Resolution No. 18, directed the Environmental Quality Council (EQC) to “conduct an interim study of the Montana Environmental Policy Act” (MEPA). As part of this study, subsection (1)(c) of the joint resolution asked EQC to examine the degree to which MEPA “results in government accountability” and “Montanans are informed of and participate in state agency decisions”. Subsection (3)(e) directs EQC to consider “whether citizens are effectively participating in the MEPA decisionmaking process”.

The Montana Consensus Council, a small state agency that specializes in designing fair, effective, and efficient public involvement and consensus-building processes, agreed to work with EQC to evaluate the public involvement processes convened under MEPA, consistent with the expectations outlined in SJR 18. This report presents the results of that effort.

Methodology

During the past two years, the Montana Consensus Council has developed, in consultation with colleagues across the country, several state-of-the-art survey instruments for evaluating participant satisfaction with public involvement and consensus-building processes.¹ Building on this work, and on a review of the literature on evaluating public involvement processes,² the Consensus Council drafted a survey for evaluating public involvement under MEPA. The survey was based on indicators of success gleaned from the literature review and the best practices for conducting public involvement. A draft survey was circulated to professional colleagues, EQC staff, and EQC members for their input and advice.

In January 2000, we mailed the survey to about 280 people, including citizens, project proponents, Montana state agencies, local government offices, federal agencies, conservation groups, law firms, and the university system (see Section H). The mailing list was compiled by EQC and includes people and organizations who participated in or commented on past MEPA-related actions.

By the end of January 2000, we had received only 55 responses, so we mailed cards to people who had not yet responded, asking them to complete the survey and return it. As of February 23, 2000, we received 96 surveys, 3 of which were left blank. The numbers that follow in this report do not always add up to 93 because not everyone responded to every part of the survey. Percentages may not add up to 100 because of rounding.

We took people at their word when they wrote on the survey that they were representing themselves as private citizens, rather than some organization or other affiliation. Readers should also recognize that individual responses from agencies and other organizations may not represent an official position.

Of the 93 completed surveys, 17 percent were filled out by state agency staff and administrators—the people responsible for conducting public involvement under MEPA. The remaining 83 percent were filled out by the people MEPA-driven public involvement is meant to serve, including citizens, conservation groups, and representatives of business and industry (project proponents). See Section H for a more detailed list of respondents.

- X Conservation organizations—22 (24%)
- X Independent citizens—21 (23%)
- X Representatives of business and industry—17 (18%)
- X Local and federal agencies, the university system, church-affiliated groups, and law firms—17 (18%)
- X State agencies—16 (17%)

Although this study likely captures the input and advice of people and organizations that account for a significant majority of those who participate in MEPA-driven public involvement processes, other perspectives may not be represented here. Survey respondents are not a random sample of Montanans; the findings in this report represent the thoughts and views of a relatively narrow, vested set of interests—people who have participated in or commented on past MEPA-related actions. Of the 93 people who filled out all or most of the survey, 37 said they had participated in 1 to 5 MEPA-driven public involvement processes, 17 said 6 to 10 processes, and 35 said 10 or more processes. Three people reported that they had not participated in any such process. Their survey responses were presumably based on personal interest as outside observers or as potential participants in the future.

Sixty-five survey respondents (72 percent) said they were basing their responses on a synthesis of many experiences with MEPA processes. Several people said that their frame of reference included processes that combined MEPA and the National Environmental Policy Act. Some people also based their responses on experiences with how MEPA-driven public involvement is typically conducted, while others based their responses, at least in part, on an idealized vision of how they think public involvement *should* be conducted under MEPA.

Key Themes

Eight clear themes emerge from a careful reading of the survey responses. These themes are presented here as a synthesis of what people said in responding to the survey.

1. **The idea of public involvement under MEPA is good public policy. But the practice of public involvement under MEPA could be improved.**

Of the 93 people who completed surveys, 88 percent responded favorably toward the idea of public involvement in MEPA-driven decisions. Public involvement is good policy, they said, because it:

- T Brings additional and often valuable information to light that might not be heard otherwise.
- T Can help produce better proposals and decisions.
- T Provides important opportunities to exchange information among stakeholders, project proponents, and responsible agencies.
- T Creates opportunities for public disclosure of proposed projects, potential impacts, and alternatives.
- T May identify problems and build understanding about projects and potential impacts while there is still time to consider alternatives, including mitigation.

Many people, however, also said that the practice of public involvement under MEPA does not always live up to its promise. A common comment was, “MEPA is fine, but agencies need to improve the way public involvement under MEPA is implemented.” Survey respondents cited a number of areas they say need improvement, including:

- T Better public notification of upcoming projects.
- T A more consistent and structured approach to public involvement from one agency to the next.
- T Broader recognition by agencies that social, cultural, aesthetic, and natural values are as substantive as economic and scientific data.
- T A better effort by agencies to clearly show how public comment is incorporated into decisionmaking.

Some survey respondents (11 people, or 11 percent) were less enchanted with the idea of public involvement in MEPA-driven decisions. They said that public involvement is costly and time consuming, and it adds little value because comments tend toward rhetoric and emotion rather than science and substance. They said that the key issues and concerns are often known in advance, and little or no new information is gained from public involvement. Several people said that public comment tends to be one-sided—against proposed projects—and that people with an ax to grind can delay or block projects, or make them unprofitable, at no cost to themselves.

- 2. Members of the general public are uninterested in most MEPA projects, or do not believe that their input will make a difference. Some people do not understand the purpose of MEPA and how it works. Consequently, few independent citizens participate in MEPA processes, which tend to be dominated by project proponents and organized interest groups.**

Most survey respondents (72 percent) said that people do participate in MEPA-driven public involvement, but that participation varies widely (and sometimes unpredictably) from project to project. Several survey respondents said that of the numbers of people submitting comments may vary, but it's usually the same people and groups that participate. Widespread public participation is uncommon. One person said that conservation groups are effective "watch dogs" for the general public.

In general, more people participate when a proposed project requires an environmental impact statement (EIS), when significant environmental resources or values may be affected, when the proposed project would be located near a population center, and when interest groups stir up a controversy. Several people said that some agencies conduct "checklist" environmental assessments (EAs), which tend to minimize opportunities for public involvement. They also said that public participation is discouraged when notices of proposed projects and their location are described only in technical or legal terms.

Several people said that one possible obstacle to more widespread participation is that the general public needs more and better information about MEPA's purpose, how public involvement is conducted, and about proposed projects and the responsible agency's decision-making process.

- 3. The objectives of public involvement under MEPA need to be clarified. This will help agencies, project proponents, stakeholders, and the general public develop a common understanding of the purpose of MEPA and MEPA-driven public involvement.**

Survey responses revealed an apparent split over the purpose or intent of MEPA. Some people said that the purpose of MEPA is for the agency to adequately examine and disclose to the public the environmental impacts of a proposed action and its alternatives. This may create opportunities for agencies and proponents to gain an understanding of the different goals each may have in permitting a project, but such opportunities are secondary, a byproduct of the process rather than its primary aim. This view of the process emphasizes the agency's role as an information source and decisionmaker.

Other people said MEPA's purpose is to discover the interests and concerns of stakeholders and the general public regarding a proposed project. They said this gives decisionmakers the benefit of interdisciplinary and public review of a proposal so that all the pros and cons are fleshed out. This view of the process emphasizes the public's role as an information source and advisor to decisions that affect public resources and the human environment.

Even among state agencies this split is apparent. Some agency staff use the opportunities created by MEPA to engage in a dialogue with the public and stakeholders. “That’s what it’s all about,” said one employee with the Montana Department of Transportation. “To bring folks together, to understand, to provide those we serve with products they want.” Others said that public comments do help inform agencies, but an actual face-to-face conversation is better. Public meetings, they said, are conducive to such exchanges.

Others state agency personnel are less inclined toward hosting such dialogue. They see their role as recipients of comments from project proponents and opponents, not as a bridge between the two. “MEPA does not facilitate dialogue between stakeholders,” said one agency administrator at DNRC.

This split has generated apparent frustration over the lack of a clear, generally accepted purpose for public involvement under MEPA. To develop a purpose that would be agreeable to most project proponents, responsible agencies, and Montana citizens, we should first clarify the objectives of public involvement under MEPA.

When asked to rank the importance of six different objectives for public involvement under MEPA, people ranged widely in their responses. Five of the six objectives received ten or more votes for ranking highest in importance (**Table 9-1**). And although a clear majority (62 percent) of people ranked “Resolve conflict among competing interests” as least important, three people ranked this objective highest. Several people commented that ranking these objectives was difficult because *all* of them are important.

The fact that the rankings are scattered relatively evenly among five of the six objectives suggests either that people expect public involvement under MEPA to serve more than one purpose, or that, at least in some peoples’ minds, the objectives of public involvement are not clear. Is public involvement under MEPA intended simply as an opportunity for agencies to provide information and education? Or is the intent to seek public input and advice? At the far end of the public involvement continuum, should we expect the process to resolve conflicts among competing interests?

Overall, survey respondents clearly ranked three objectives highest in importance (**Table 9-1**). They are:

- 1st: “Increase the quality of the project and final decisions.”**
- 2nd: “Seek public input and advice.”**
- 3rd: “Provide information and education.”**

Interestingly, if we look at the four main categories of respondents, the split described above becomes more apparent. For citizens representing themselves, the three most important objectives were the same as for the overall group, and conservation groups simply flipped the first and second objectives. State agencies and representatives of business and industry (project proponents), however, said the most important objective

was to provide information and education. Both of these groups also gave a high ranking to promoting mutual understanding of substantive issues.

Most people gave a strong last place ranking to “Resolve conflict among competing interests.” Apparently most people do not expect MEPA to be a conflict-resolution process, nor are most agencies eager to accept such a task.

Table 9-1. Ranking the Importance for Objectives of Public Involvement Under

MEPA. The numbers in this table indicate the number of times each objective was ranked 1, 2, 3, etc. For example, “Seek public input and advice” was ranked first 27 times, second 21 times, third 18 times, and so on.

Public involvement objectives under MEPA	Ranking 1 (highest)	2	3	4	5	6 (lowest)
Provide information and education.	19	18	23	11	10	5
Seek public input and advice.	27	21	18	11	7	1
Promote mutual understanding of the substantive issues.	10	16	13	26	15	2
Increase the quality of the project and final decisions.	32	20	7	12	7	6
Foster trust, communication, and understanding among stakeholders, including agencies.	14	7	10	12	22	18
Resolve conflict among competing interests.	3	3	5	12	14	53

4. The quality of public involvement processes varies widely from case to case and from agency to agency. There should be a consistent, structured approach across all state agencies.

Many people said that there are as many formats for public involvement as there are state agencies conducting them. This often leads to confusion and misunderstandings among stakeholders, including project proponents. In the survey, we asked state agencies whether they possessed written policies and procedures for public involvement under MEPA. The departments of Fish, Wildlife and Parks (DFWP); Natural Resources and Conservation (DNRC); and Agriculture all said they refer to the Administrative Rules of Montana. DFWP also provided copies of several interoffice memoranda on MEPA compliance and an EA checklist. The Department of Transportation (MDT) said it has a public involvement handbook. The Department of Environmental Quality (DEQ) reported that staff are currently drafting written policy. And the Department of Military Affairs said it follows guidelines in Army Regulation 200-2 on the environmental effects of Army actions.

Survey respondents offered several ideas on how to make public involvement more consistent and uniform from one agency to the next.

- X Make public notification requirements uniform.
- X Require public meetings in all MEPA processes.
- X Set a standard EA and EIS comment period for all agencies. (Most suggested a 30-day comment period for all EAs and 60-day for all EISs. One person said a minimum 90-day period should be required for all MEPA projects.)
- X Make it easier for project sponsors to work with one or two responsible agencies, rather than many.

Many people also said that the public involvement process should be easier to understand and take part in, that it should be more structured. They suggested a variety of strategies for doing this, some of which would streamline the structure while others would add new components, such as facilitation and additional documentation.

- X Make sure public involvement is **facilitated** by an impartial third party—unstructured processes go awry.
- X Use small groups—focus groups, advisory committees, field tours—to encourage a detailed, informed discussion of the issues and alternatives at hand. This saves time and money, and improves the quality of the decision-making.
- X Agencies should provide better summaries—balanced, science based, with references cited—on the issues and decisions at hand.
- X Agencies should summarize all public comments and distribute copies to all participants, so people know they have been heard.
- X Agencies should agree on standard definitions of “significant” and “cumulative impacts.”
- X Avoid unnecessary delays by fixing a finite time for comments and responses. Hold people and organizations responsible for delays by making them liable for any costs incurred.
- X Require agencies to respond only to substantive comments.
- X Publish success stories of how public involvement has improved projects and decision making.

5. **Montanans have opportunities to participate in state agency decisions, But public notification about upcoming MEPA projects needs to be improved, and state agencies should do more to encourage public participation.**

Most people (69 percent of survey respondents) generally agree that stakeholders have opportunities and are encouraged to participate in public involvement processes under MEPA. Legal notices are published in newspapers, they said, and state agencies take public comments in writing and also directly at meetings. Several people pointed out that participation does require some initiative from the stakeholders to find out about a project proposal and the request for comments. One respondent from business and industry said that environmental groups effectively track MEPA projects and act as citizen watchdogs when members of the general public do not participate.

Even among the people who felt that opportunities for participation were adequate, however, many said that agencies need to do more than run small legal notices in local newspapers. Such notices, they said, typically fill an inch or two of column space, are buried within the newspaper, and are easy to miss. “Legal notices may meet the letter of the law,” said one respondent, “but they’re not enough.”

Suggestions for improving public notice included working with reporters to generate feature stories, posting notices on a central MEPA web site, doing public service announcements on radio and television, and setting up a telephone hot line with project announcements and information on how to submit comments. Some complained that the legal descriptions of property given in most notices are difficult to understand, and the public would be better served by “real world” descriptions in plain language.

Twenty-three survey respondents (26 percent) said that opportunities and encouragement for public involvement were not adequate. Many of these people said that public notification and encouragement varies widely from one state agency to the next, and that this lack of consistency or uniformity is a problem in itself. “Unless a group is signed up to receive MEPA notices, it’s almost impossible to find out what is going on,” one respondent reported.

Several people said that in some cases agencies have done a good job of contacting stakeholders and providing ample opportunities for comment, but sometimes agencies act as though they want to discourage public involvement. One person alleged that the Montana Department of Transportation “skips MEPA notice requirements by getting a categorical exclusion from MEPA and then following NEPA, which has its own notice requirements. It is therefore frustrating and impossible to follow MEPA compliance at MDT.” A number of independent citizens and people representing conservation groups complained about what they characterized as the ongoing inadequacy of public involvement processes conducted by the Oil and Gas Conservation Division at DNRC. Oil and Gas proposals, said one respondent, have been “particularly clandestine.”

Several people said that agencies may provide opportunities for public involvement, but seldom do they actually *encourage* participation. Several people said that many incentives (workload, budget and staff constraints, and political pressure) drive agencies to streamline the MEPA process, so it’s better for them to minimize public involvement. A few people also said that “stakeholders” is too narrow a term—that MEPA is about *public* participation. Too often, they said, agencies want to involve only those with an economic interest in the proposed project. They worried that when agencies are responsible for identifying stakeholders, they may “stack the deck,” resulting in a surfeit of one-sided comments.

State agencies, on the other hand, said that they do a good job of providing opportunities and encouragement for stakeholder participation in public involvement processes under MEPA. Some agency personnel said that they “go beyond what is necessary” to involve the public. Several state agency respondents said that a news release was adequate

notice. In contrast, one state agency official with DNRC said that a properly conducted public involvement process should include public scoping, informational meetings, and hearings. Another person at DNRC said that citizen interests are not often incorporated, and organized special interest groups dominate the public involvement process—a concern voiced by other state agencies and other survey respondents. Finally, two agency responses (both from DNRC) indicated some frustration that the process may be too open to public participation, one questioning how the term *stakeholders* should be defined: “Anyone with an interest—or someone that is truly impacted by a proposed action?”

- 6. The quality of public comment needs to be improved. Comments should be substantive and based on the best available information. But agencies need to provide better, more timely information to educate citizens. They must also show serious consideration for comments and recognize that less tangible environmental values (such as social, cultural, aesthetic, and natural values) are just as substantive as economic values and scientific information.**

Several people within state agencies and business and industry, and one independent citizen, said that the bulk of public comments are often not substantive or relevant, and suggested that when projects are highly technical, few members of the general public are knowledgeable enough to understand them. But most citizens and people representing conservation groups said that project proponents and responsible agencies do not always provide good, timely information on which to base comments. Often, they said, the information is unnecessarily technical, legal, or otherwise hard to understand. People complained that, in some cases, project proponents and agencies do not fully disclose the nature of the project or its potential impacts. Public comment, said one person, is only as good as the information provided by the project proponents and agencies.

People also said that most agencies show a bias toward scientific and economic data, too often dismissing substantive comments based on social, cultural, aesthetic, and natural values. Public comment, they said, doesn’t have to come from experts or economically vested interests to produce valuable improvements to the proposed project. People said that agencies and project proponents should make a good faith effort to fully disclose all relevant information to the public, and do so before the formal public involvement process begins. Several people also said that public comment would improve if more time was allowed to review and comment on draft EAs and EISs.

- 7. Although state agencies seek public input and advice, they don’t always listen to what is said. The process of incorporating public comment into MEPA analysis, making trade-offs among competing interests, and integrating public input and scientific information should be more transparent, participatory, and interactive.**

Survey respondents were divided down the middle when asked whether responsible agencies fairly and accurately incorporate public comments into decisions. Forty-four

percent said that, in general, agencies do fairly and accurately incorporate comments, while 42 percent disagreed (14 percent were indifferent). Interestingly, state, local, and federal agencies said that comments are fairly and accurately incorporated, while most conservation groups, business and industry, and citizens disagreed.

Written comments in response to this question indicated a range of expectations for incorporating public comment under MEPA. Some people said that MEPA does not require “fair and accurate” incorporation of comments into the decision. Under MEPA, they argued, an agency must provide the rationale for its decision, which should in effect document the “fairness” of the decision. Others said that agencies must show that public comment was seriously considered. They voiced frustration over instances in which they say agency decisions disregarded substantive information from public comment. Between these two poles, many people said that stakeholders, the agencies, and project proponents all bear responsibility for improving the relevance and content of public comment.

For substantive comments to be acknowledged and incorporated into the analysis and decision, agencies, project proponents, and other stakeholders must be willing to engage in a genuine exchange of information, a process of mutual learning. Apparently, opportunities for such an exchange do exist. Most people (77 percent) agreed with the statement that “The stakeholders, including project proponents and the responsible agency, have an opportunity through public involvement processes under MEPA to learn about each other’s interests and concerns.”

Nevertheless, many people cited difficulties, chief among them a tendency toward rhetoric and posturing that overshadows genuine discussion and disclosure of real issues. People also said that agencies and stakeholder groups may be locked into their positions and are unwilling to listen to and seriously consider what others have to offer. Representatives of conservation groups said that mutual learning would be made easier if public involvement occurred earlier in the process, allowing comment on the purpose and need of the proposed action. This might also prevent the “us versus them” mentality that sometimes arises when agencies and project proponents begin working together long before the public is involved. Finally, comments from state agencies indicated that fostering dialogue is low on the long list of agency priorities. Existing staffing levels make it difficult to implement all aspects of MEPA because of the time required to prepare MEPA documents.

8. Public involvement is a critical ingredient of MEPA. The associated costs and perceived delays in the decision-making process are outweighed by the benefits of informing the public, gathering input, and securing public understanding of and support for projects.

The survey asked people whether they agreed or disagreed that public involvement under MEPA is timely, cost-effective, and efficient. About 56 percent of respondents agreed that the public involvement process is timely. About 48 percent agreed that it is cost-effective,

while only about 40 percent agreed that it is efficient. The “indifferent” check-off drew more responses for this statement than for any other statement in the survey (16 percent for timely, 32 percent for cost-effective, and 25 percent for efficient). This may reflect a low interest or level of concern with these qualities—several people noted that public involvement was so essential that it shouldn’t be measured by its cost-effectiveness or efficiency. Others said that only the agencies know how much such processes cost and how much time is involved, so they felt unqualified to answer. Some people said these qualities depend to a high degree on which agency is involved, and others said it depends on the nature of the project.

The survey also asked people to rank 10 issues related to public participation under MEPA in order of their importance. Interestingly, the two lowest rankings were “Delays associated with public involvement,” and “The costs associated with public involvement.” Several people said that delays and costs associated with public involvement are outweighed by the benefits of informing the public, gathering input, and securing public understanding of and support for projects.

Most survey respondents (74 percent) agreed that public input improves the proposed project and results in better decisions. Some said that this was “obvious” or “always” the case. Others said that the degree of improvement varies from project to project, depending in part on the complexity of the project. A few people said that public input does not result in better projects and decisions, but only because the agencies disregard the input. They said that public comments often provide valuable information and a broader perspective on how to improve projects, and agencies need to include such input in their decisions.

Recommendations From the Montana Consensus Council

The following preliminary recommendations for improving public involvement in MEPA-driven decision making are based on the findings of the survey and on the Montana Consensus Council’s extensive experience in designing participatory and collaborative processes for public decision making.

- 1. Amend the MEPA statute to clarify the value of public involvement under MEPA (see themes 3 and 8).**
 - A. Public participation in state government decision making is mandated under Montana’s constitution and statutes. Article II, Section 8 of the 1972 Montana constitution states that “The public has the right to expect government agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.” Pursuant to this constitutional mandate, the legislature has provided guidelines on public participation in governmental operations in section 2-3-101, MCA. MEPA requires that agencies make information on proposed

actions available to the public, with the intent of promoting informed decision making.

- B. The results of the survey indicate that most people believe that public involvement is a critical ingredient for the successful implementation of MEPA.
- C. Public participation, however, is not mentioned in the “Purpose” section of MEPA (section 75-1-102, MCA). Further, survey results indicate that the value and purpose of MEPA-driven public involvement need to be clarified.
- D. Therefore, the legislature should amend the law to include a statement of the value of public involvement under MEPA.

2. To further clarify the value and purpose of public involvement under MEPA, amend the model MEPA rules to include the following statement of values for public participation (adapted from the International Association for Public Participation) (see themes 3 and 8).

- A. The public should have a say in decisions about actions that affect people’s lives.
- B. Public participation should be based on the premise that the public’s contribution will influence the decision.
- C. The public participation process communicates the interests and meets the process needs of all participants.
- D. The public participation process seeks out and facilitates the involvement of people who are potentially affected.
- E. The public participation process involves participants in defining how they participate.
- F. The public participation process provides participants with the information they need to participate in a meaningful way.
- G. The public participation process communicates to participants how their input affected the decision.

3. Amend the MEPA model rules to provide a consistent approach to public involvement under MEPA across agencies and projects (see theme 4).

- A. Encourage agencies to develop a public participation plan for every EA and EIS; in other words, provide an opportunity for some type of public involvement on all EA and EIS projects (see “How to Design an Effective Public Involvement Strategy”).
- B. Encourage agencies to use the Montana Consensus Council, a state agency that specializes in public participation and conflict resolution, to help develop public participation plans.
- C. Require a public meeting or some other type of opportunity for citizens to interact with the agency and the project proponent on all EISs.
- D. Require a 30-day public comment period on all EAs.

- E. Require a 60-day public comment period on all EISs, unless a longer period is requested in writing by the project proponent or a group of citizens. If a request is made to extend the public comment period, the agency must justify its decision in writing to extend or deny the request.
- 4. Amend the MEPA model rules to encourage “best practices” for public involvement under MEPA (see themes 1, 4, and 5).**
- A. Insert “A Checklist of Strategies for Public Participation Under MEPA”—into the MEPA model rules.
 - B. Insert “Public Participation Tools and Strategies”—into the MEPA model rules.
- 5. Amend the MEPA model rules to improve public awareness of MEPA and opportunities to participate (see themes 2 and 5).**
- A. Create a web site dedicated to MEPA. Contents should include notices of proposed projects, active comment deadlines and submission addresses, and information on how to be an effective participant.
 - B. Develop a single interagency brochure on public involvement opportunities under MEPA. Include suggestions on how to provide effective comments.
 - C. Require agencies to distribute press releases or feature stories on every proposed project that requires an EIS. These stories should explain the nature and timing of the proposed project, anticipated environmental impacts, the agency’s role and responsibility, and opportunities to participate. Encourage agencies to reach beyond print media to radio, television, and the web.
- 6. Amend the MEPA model rules to provide a more transparent, participatory, and interactive process to integrate public input and scientific information (see theme 7).**
- A. Section XI, 2-3 of the MEPA model rules require agencies to include in EISs “a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the agency (in all cases, a representative sample of comments must be included);” and “the agency’s responses to substantive comments, including an evaluation of the comments received and disposition of the issues involved.”
 - B. Based on the results of the survey, however, citizens--including project proponents, interest groups, and independent citizens--are not satisfied with the degree to which their input and advice is reflected in agency decisions.
 - C. Require some type of public involvement activity that allows the public to validate the agency’s attempt to fairly and accurately incorporate public input and scientific information--for example, use a task force of citizens, project proponents, and agency officials to review and incorporate public

comments; or use a feedback panel to review the agency's attempt to incorporate public comment.

How to Design an Effective Public Involvement Strategy

(Adapted with permission from James L. Creighton, *Involving Citizens in Community Decision Making*, Program for Community Problem Solving, 1992.)

Public involvement may be needed when:

- T The decision will have a significant impact.
- T The decision will affect some people more than others.
- T The decision will affect a vested interest or use.
- T The decision involves a subject that is already controversial.
- T The decision will need support for implementation.

When in doubt:

- T Check with others who have worked on similar issues.
- T Ask the stakeholders.
- T Conduct focus groups.
- T Design checkpoints.

Identify “the public” — specific people and organizations that may have an interest in or be affected by the project or decision.

Identify the goal of public involvement: What do you hope to accomplish with public involvement? What role should the public play in the decision?

- T Help review the purpose and need for the project?
- T Provide information?
- T Develop and evaluate potential alternatives or mitigations?
- T Generate support for the decision?

Determine the decision rule: How will decisions be made? What role does the public play in the decisionmaking process?

- T Does the agency retain exclusive authority to make the final decision?
- T Or does the public participate in the decision-making process?

Consider various methods for involving the public. Choose a method that meets the objectives of the agency and the needs of the stakeholders. Common public involvement methods include:

- T Surveys and questionnaires.
- T Interviews.

- T Focus groups.
- T Open houses.
- T Advisory councils and task forces.
- T Public hearings.

Plan how to provide the public with the information needed to generate meaningful participation and comment.

Consider opportunities for ongoing public involvement throughout the life of the project.

Develop a strategy to monitor, evaluate, and improve the effectiveness of the public involvement process.

A Checklist of Strategies for Public Participation Under MEPA

Key Project Steps	Collaborative Possibilities
Project Conception	<input type="checkbox"/> Consult an experienced facilitator or mediator to help determine what type of collaboration may be appropriate. <input type="checkbox"/> If you choose to use some form of collaborative process, include time, money, and staff in your project plan and budget.
Pre-project Analysis	<input type="checkbox"/> Ask an impartial third party to assess the issue, situation, or conflict. <input type="checkbox"/> Identify stakeholders, issues, and options on how to proceed.
Develop Proposed Action	<input type="checkbox"/> Consult stakeholders—including citizens, other agencies, and other officials—in developing and seeking agreement on a proposed action. <input type="checkbox"/> Interview parties one-on-one; convene stakeholder groups; convene a broad-based multi-party group to discuss issues and concerns. <input type="checkbox"/> Foster mutual learning through joint fact-finding and exchanging information.
Scoping	<input type="checkbox"/> Consider different processes for gathering public input and advice (public meetings, open houses, surveys, stakeholder meetings, study circles, etc.). <input type="checkbox"/> Use an impartial facilitator to convene and manage large, controversial public meetings.
Validate the Issues	<input type="checkbox"/> Based on public input and advice, consult stakeholders to foster a common understanding of the MEPA-significant issues.
Develop Alternatives	<input type="checkbox"/> Convene a working group of stakeholders to develop alternatives. <input type="checkbox"/> Encourage citizens and other stakeholders to develop their own alternative. <input type="checkbox"/> Use stakeholders as a sounding board to ensure that the range of alternatives responds to MEPA issues and unresolved issues.
Identify Preferred Alternatives	<input type="checkbox"/> Use expert panels and stakeholder groups to help analyze alternatives. <input type="checkbox"/> Use agreed-upon criteria to evaluate alternatives. <input type="checkbox"/> Clarify the distinction between facts (science) and values (goals or desired future conditions).
Analyze EA or DEIS Public Comments	<input type="checkbox"/> Convene a working group of stakeholders to review public comments, clarify dominant themes, validate or revise MEPA issues, and identify criteria for the selected alternative.
Select Alternative	<input type="checkbox"/> Before the responsible official announces the selected alternative, he/she may consult stakeholders to confirm the decision and rationale.
Appeal	<input type="checkbox"/> Resolve outstanding issues through informal, non-adversarial processes of negotiation and mediation.
Litigation	<input type="checkbox"/> Consult Department of Justice and the Office of the Attorney General. <input type="checkbox"/> Seek opportunities for settlement negotiations, mediation, and/or arbitration.
Post Decision	<input type="checkbox"/> Convene a working group to monitor and evaluate implementation, and to suggest appropriate changes to the plan of action.

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Public Participation Tools and Strategies

(Adapted from *Public Participation Workshop: Tools, Strategies, and Resources*, the Jefferson Center, 2000.)

To Inform and Educate

Advertisements
Public Service Announcements
Feature Stories
Mailing List
Newsletters
Poster Campaign
Report Summaries
Teleconferencing
Videos
Bill Stuffers
E-mail
Electronic Bulletin Board
Web Site
Fliers and Brochures
Telephone Hot Line
Interactive Displays and Kiosks
Community Information Staffer
Briefings with Key Individuals
Field Demonstrations
Class or Seminar

To Seek Public Input and Advice

Action Center
Brainstorm Session
Charette
Coffee Klatsch
Conference or Retreat
Drop-in Center
Electronic Town Meeting
Town Meeting
Fair
Field Tour or Site Visit
Forum
Games and Contests
Listening Bureau

Nominal Group Workshop
Open House
Open Meeting
Participation Style Radio or TV Show
Televote
Planning Workshop
Public Hearing
Samoan Circle
Working Meeting
Focus Group
Interviews
Log of Citizen Contacts
Ombudsman
Monitoring Media Stories
Survey or Questionnaire
Blue Ribbon Panel
Critics Committee
Depolarizing Committee
Eager Beaver Committee
Feedback Panel
Oversight Committee
Task Force
Deliberative Poll
Search Conference

To Seek Agreement

SimuReal
Study Circles
Working Group
Citizens Jury
Citizens Panel
Bridge Committee
Citizen Commission
Thumbs Up, Thumbs Down Committee
Negotiating Committee
Consensus-building Forum

Agencies and Organizations that Responded to the Survey

Conservation Groups

Bear Creek Council
Big Hole Watershed Committee
Citizens for A Better Flathead
Fishing Outfitters Association of Montana
Friends of the Rocky Mountain Front
Friends of the Wild Swan
Gallatin Valley Land Trust
Greater Yellowstone Coalition
Keep Montana Clean and Beautiful
Medicine River Canoe Club
Montana Audubon
Montana Ecosystem Defense Council
Montana Environmental Information Center
Montana River Action Network
Montana Trout Unlimited
Montana Wilderness Association
Montana Wildlife Federation
Public Lands Access Association

Citizens Representing Themselves

Unidentified (2)
Billings (1)
Bozeman (2)
Great Falls (6)
Helena (1)
Indiana (1)
Kalispell (1)
Miles City (1)
Missoula (3)
St. Regis (1)
Stockett (1)

Businesses and Industries

ASARCO
EHS Services
Express Pipeline
Exxon Mobile Billings Refinery
IMP
Land and Water Consulting, Inc.
Montana Alternative Livestock Producers

Montana Building Industry Association
Montana Farm Bureau
Montana Logging Association
Montana Power Company
Montana Refining Company
Montana Resources
Montana Stockgrowers Association
Montana Wood Products Association
WBI Holdings, Inc.
Western Environmental Trade Association
WGM Group

Federal Agencies

U.S. Bureau of Land Management
U.S. Department of Agriculture, Natural Resource Conservation Service
U.S. Environmental Protection Agency

Local Government

Butte-Silver Bow Local Government
Extension Service
Gallatin County Commissioner
Jefferson County
Missoula Health Department
Ravalli County Planning Board

Other

Browning Law Firm
Gough, Shanahan, Johnson, and Waterman
Montana Association of Churches
Montana Catholic Conference
University of Montana School of Law

State Agencies

Montana Department of Agriculture
Montana Department of Environmental Quality
Montana Department of Fish, Wildlife and Parks
Montana Department of Military Affairs
Montana Department of Natural Resources and Conservation
Montana Department of Transportation
Montana Natural Resource Information System

Endnotes

¹ “Montana group tries scorecard approach,” Will Harmon. In *Consensus*, January 1999. Participant Satisfaction Scorecard, Montana Consensus Council, 1998. For a copy of the scorecard, call the Council at (406) 444-2075.

² Thomas C. Beierle and David M. Konisky, *Public Participation in Environmental Planning in the Great Lakes Region* (Resources for the Future, Washington, D.C., 1999); Judith Ennis, “Evaluating Consensus Building,” in Lawrence Susskind, ed., *Consensus Building Handbook* (Sage Publications, 1999); S. Goldenberg and S. Frideres, “Measuring the Effects of Public Participation Programs,” in *Environmental Impact Assessment Review* 6(3)(1986): 273-281; J.B. Rosener, “Citizen Participation: Can We Measure its Effectiveness?” in *Public Administration Review* 5(1978); and Martin Schweitzer, et. al., “Evaluating Public Participation Efforts,” in *International Association for Public Participation* (first quarter, 1999); O’Connor Center for the Rocky Mountain West and Institute for Environment and Natural Resources, co-sponsors, *Reclaiming NEPA’s Potential: Can Collaborative Processes Improve Environmental Decision Making?* (March 2000).